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May 28, 2021

**VIA ELECTRONIC FILING**

Hon. Bernard J. Logan, Clerk  
Clerk of the Commission  
c/o Document Control Center  
State Corporation Commission  
1300 E. Main Street  
Richmond, VA 23219

**Re:** *Commonwealth of Virginia, ex rel. State Corporation Commission*  
*Ex Parte: Establishing the rates, terms and conditions of a universal fee to be*  
*paid by the retail customers of Appalachian Power Company*  
**Case No. PUR-2020-00117**

Dear Mr. Logan:

Please find enclosed for electronic filing in the above-captioned proceeding the  
Comments of Sierra Club in Response to the Commission's Order on Additional Proceedings.  
Should you have any questions about this filing, please do not hesitate to contact me.

Sincerely,

*/s/ Matthew L. Gooch*

Matthew L. Gooch

cc: Certificate of Service

COMMONWEALTH OF VIRGINIA  
STATE CORPORATION COMMISSION

COMMONWEALTH OF VIRGINIA, *ex rel.*

STATE CORPORATION COMMISSION

CASE NO. PUR-2020-00117

*Ex Parte:* Establishing the rates, terms, and conditions of a universal fee to be paid by the retail customers of Appalachian Power Company

**COMMENTS OF SIERRA CLUB IN RESPONSE  
TO ORDER ON ADDITIONAL PROCEEDINGS**

Pursuant to the State Corporation Commission's ("Commission") April 21, 2021, Order on Additional Proceedings ("Order"), the Sierra Club, by counsel, hereby files the following Comments.

**BACKGROUND & INTRODUCTION**

The Percentage of Income Payment Program ("PIPP" or the "Program") was created as part of the transformational Virginia Clean Economy Act of 2020 ("VCEA"). Acts ch. 1193 & 1194 (2020).<sup>1</sup> The VCEA left a number of questions unanswered as to the scope and character of the PIPP. Rather, the VCEA charged the Commission with the initial task of establishing the rates, terms, and conditions of a universal service fee ("USF") to fund the PIPP in the service territories of Dominion Energy Virginia ("Dominion") and Appalachian Power Company ("APCo" or the "Company"). Va. Code § 56-585.6.A. The Commission initiated this proceeding, various parties intervened, and ultimately the Commission approved a PIPP fee of \$0.001803/kWh, with no effective date, designed to allow APCo to recover \$25 million

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<sup>1</sup> For a more detailed background on the Clean Economy Act and this docket, see Comments on Hearing Examiner's Report filed by Sierra Club (Dec. 3, 2020) in PUR-2020-00117.

annually.<sup>2</sup>

A few months later, the General Assembly enacted statutory amendments to the PIPP.

Acts ch. 308 (2021) (“Chapter 308”). The amendments included:

- Capping the total annual program costs for Dominion (\$100 million) and APCo (\$25 million);
- Directing the Department of Social Services (“DSS” or “Department”) to adopt rules or establish guidelines for the adoption, implementation, and general administration of the PIPP;
- Specifying that DSS has the power to include exemptions for terms of program participation or energy use reduction in its discretion;
- Authorizing the Commission to promulgate any rules necessary to ensure that (i) funds collected from each utility’s universal service fee are directed to the PIPP Fund and (ii) utilities receive adequate compensation from the Fund, on a timely basis, for all reasonable costs of the PIPP;
- Providing that PIPP-eligible customers may, to the extent reasonably possible, utilize existing energy efficiency or related programs approved by the Commission for a Phase I and Phase II Utility and existing and available federal, state, local, or nonprofit programs;
- Authorizing DSS to conduct a gap-filling analysis regarding the efficacy of existing and available federal, state, local, or nonprofit programs to meet the energy reduction obligations of this section, with a report provided to the relevant legislative committee by November 1, 2022.

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<sup>2</sup> Order of Dec. 23, 2020, at p.12.

The 2021 legislation also directed the Commission to issue an order for the universal service fee to be collected from customers with the applicable service territory “*as soon as practicable following the effective date of this act.*”<sup>3</sup> Following the enactment, the Commission reopened this docket and directed the Company to address a number of issues and provided the opportunity for interested parties to comment, request a hearing, or both. As directed, on May 12 APCo filed its Supplemental Filing in Response providing its answers to the issues presented by the Commission.

### COMMENTS IN RESPONSE TO THE COMMISSION’S ORDER

The proceedings in this docket in 2020 made evident that the character and structure of the PIPP were disputed in the wake of the VCEA. The waters were muddy. For instance, the parties grappled with whether energy efficiency upgrades were mandatory or whether participants could participate if they did not qualify for an APCo DSM program.

The 2021 legislative changes to the PIPP statute settled, as a statutory matter, a number of these issues. Sierra Club will not take issue in this proceeding with the policy choices of the General Assembly in Chapter 308. Accordingly, Sierra Club offers the following comments to certain of the Commission’s questions below to provide clarity where a policy is settled and argument where it is not.

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**Item #1** of the Commission’s Appendix asks: “Does Chapter 308 impact the way(s) in which the Commission should evaluate costs associated with the PIPP? If so, how? Address any new expectations regarding the program in general and its scope.”

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<sup>3</sup> Acts ch.308 (enactment clause 2).

**Answer:** The 2021 legislation changed expectations for the program in a number of material respects, as follows:

**a. Energy reduction programs**

For Sierra Club, the vital question presented in this docket was the level and scope of funding for energy reduction programs. The VCEA directed the Commission to set the USF at a rate adequate to reduce the amount of electricity used by the eligible participant's household.<sup>4</sup> The Commission's initial Order Establishing Proceeding had framed the issue as: "How the objective of reducing usage through participation in weatherization, energy efficiency, and conservation will be accomplished; identify any costs associated with these programs that are proposed to be collected by the fee." To that end, Sierra Club argued that the Commission should set the rate to recover an adequate amount to discharge this statutory duty, and that the Company's Commission-approved low-income energy efficiency programs were not designed to accommodate the PIPP.<sup>5</sup>

The 2021 amendments to the PIPP statute change the legal landscape for energy reduction programs in four important respects: first, the total program costs are now capped;<sup>6</sup> second, gap-filling programs are deferred to a study to be submitted to legislature in late 2022;<sup>7</sup> third, participation in energy reduction programs has been conditioned on the Department's discretion, allowing for exceptions to participation;<sup>8</sup> and fourth, PIPP-eligible customers may, to

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<sup>4</sup> Va. Code 56-585.6.A (2020).

<sup>5</sup> See Sierra Club's Comments and Objections to Hearing Examiner's Report at 9 (December 3, 2020).

<sup>6</sup> Va. Code § 56-585.6.A.

<sup>7</sup> Va. Code § 56-585.6.D.

<sup>8</sup> Va. Code § 56-585.C ("Such rules or guidelines shall include exemptions for terms of program participation or energy use reduction as the Department deems appropriate.").

the extent reasonably possible, utilize existing energy efficiency or related programs approved by the Commission and existing and available federal, state, local, or nonprofit programs.<sup>9</sup>

Sierra Club recognizes these notable changes to the statutory landscape. These changes do not present an impetus for the Commission to make findings or change its Order Establishing Rates, Terms, and Conditions of December 23, 2020.

**b. Double recovery.**

The 2021 legislation did not address the issue that Sierra Club has consistently raised: the potential for APCo to double recover certain costs. In short, APCo does not currently receive 100% of the amounts billed to customers that may shift into PIPP. Instead, as Sierra Club explained at the hearing and in its post-hearing filings, APCo's current base rates are designed to incorporate a certain amount of uncollectible expenses.<sup>10</sup> Under PIPP, however, the Company will recover 100% of the difference between the billings and the capped bill amount. Customers that had failed to pay will now have a portion of their bills covered through a rider. Therefore, the USF should be adjusted to account for this and avoid an over-recovery or double-recovery of costs. The Hearing Examiner correctly recognized that the PIPP fee could result in double recovery of costs if not adjusted to account for uncollectible expenses recovered through base rates.<sup>11</sup>

In its final order, the Commission declined "to make a finding as to the potential for double recovery of costs if the PIPP fee is not adjusted to account for uncollectible expense

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<sup>9</sup> Va. Code § 56-585.6.D.

<sup>10</sup> See Sierra Club Comments and Objections to Hearing Examiner's Report at 5-6 (December 3, 2020).

<sup>11</sup> See Hearing Examiner's November 16, 2020, Report at 16 and Sierra Club Comments and Objections to Hearing Examiner's Report at 5-6 (December 3, 2020).

recovered through base rates.” The Commission stated that “[t]his issue will be addressed in future proceedings when APCo will provide more data to support a fully informed evaluation.”<sup>12</sup>

While Sierra Club believes this adjustment should be built in to the USF on a projected basis, Sierra Club supports the Commission’s commitment to address the double-recovery in an annual adjustment proceeding for the USF. The 2021 legislation provides clear authority for the Commission to do so, as the Commission is directed to promulgate any rules necessary to ensure that “utilities receive adequate compensation from the Fund, on a timely basis, for all reasonable costs of the PIPP, including costs associated with bill payment credits for eligible customers.”<sup>13</sup>

### **c. Additional process**

The 2021 PIPP legislation created a higher level of certainty regarding the administrative process moving forward. Crucially, DSS has been granted express authority to establish the PIPP. DSS has also been charged with delivering its gap analysis report regarding energy reduction programs to the legislature by November 1, 2022.<sup>14</sup> As mentioned above, the legislation does away with mandatory participation in energy reduction programs as a condition of participation, allowing DSS the ability to create exceptions.

**Item #3** of the Commission’s Appendix asks: “Initially, should APCO’s customers pay a PIPP fee designed to recover only the startup costs of the Department of Social Services and the reasonable start-up costs of APCO (or an estimate of such)? What is the amount of such costs?”

**Answer:** Sierra Club does not disagree with the Company’s request that the Commission authorize deferral of utility administrative and start-up costs associated with PIPP for recovery

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<sup>12</sup> Order of Dec. 23, 2020, at p.9.

<sup>13</sup> Va. Code § 56-585.6.D.

<sup>14</sup> Va. Code § 56-585.6.D.



through the USF once the program is implemented and allow Department costs to be recovered.<sup>15</sup>

**Item #4** of the Commission's Appendix asks: "In addition to start-up costs, are there other costs that should be collected prior to commencement of the PIPP? If so, name the cost categories and estimates of such costs."

**Answer:** Sierra Club is not aware of any other costs, and does not dispute the Company's response to this question.

**Item #6** of the Commission's Appendix asks: "Should some amount of PIPP fee collections from customers (e.g., fees for start-up costs) begin prior to the commencement of the PIPP?"

**Answer:** Sierra Club notes that 2021 legislation directs the Commission to "issue an order providing for a non-bypassable universal service fee to be collected from customers . . . *as soon as practicable following the effective date of this act.*"<sup>16</sup> (Emphasis added.) The Company states that if it is required to collect fees "for the purpose of building up a reserve or escrow account, then the Company should collect those funds from customers prior to the commencement of the PIPP."<sup>17</sup> Sierra Club does not take issue with this approach. The full USF charge should be imposed on customer bills in a way to limit cost impacts to customers, when that time comes.

**Item #7** of the Commission's Appendix asks: "If APCo can receive compensation from the Fund for all reasonable costs of the PIPP, is there any need for the Commission to determine the proper recovery mechanism for [administrative] costs pursuant to Code § 56-585.6 B?"

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<sup>15</sup> See Company Supplemental Response at 6.

<sup>16</sup> Acts ch. 308 (2021) enactment clause 2.

<sup>17</sup> Company Supplemental Response at 7.

**Answer:** The Company notes that “is not clear to the Company whether this will be addressed by the Department of Social Services or the Commission. The Commission may wish to require the utility to conform to the rules adopted by the DSS.”<sup>18</sup> Sierra Club believes that the Commission should play a central oversight role in any disbursements to APCo from the Fund (whether for administrative or other costs), as DSS is not a utility regulator. As a related matter, the Commission met its statutory obligation to make this determination regarding administrative costs in its December 2020 Order, finding that the PIPP fee set to recover “between \$20 million and \$25 million annually would allow APCo . . . to recover the estimated administrative costs identified in the record.”<sup>19</sup> Sierra Club also believes that the USF is the proper initial mechanism for cost recovery under the PIPP—cash draws from the Fund by the Company should be governed by a Commission rulemaking, as discussed in the next answer below.

**Item #8** of the Commission’s Appendix asks: “Pursuant to Code § 56-585.6 C as effective July 1, 2021, in your opinion, are any Commission rules necessary to ensure that funds collected from each utility’s universal service fee are directed to the Fund? If so, explain the need for such rules. If not, explain how collected fees will be directed to the Fund. In your opinion, could the Commission, for example, order APCo to direct such fees to the Fund?”

**Answer:** Yes, the Commission can order APCo to direct fees to the Fund. And it should. The Commission should also oversee and specifically authorize APCo’s taking of ratepayer money from the Fund.

Sierra Club notes that while the legislation requires the Company to “cooperate with the requests of [DSS] in the implementation and administration of the PIPP,”<sup>20</sup> it is ultimately the

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<sup>18</sup> Company Supplemental Response at 7.

<sup>19</sup> Order of Dec. 23, 2020, at p.22.

<sup>20</sup> Va. Code § 56-585.6.C.

Commission with jurisdiction for the oversight and regulation of the Company. The PIPP statute respects this historic oversight. The Commission and its staff are also better suited than DSS to create such rules concerning the Company's cash balances. Sierra Club believes it would be appropriate for the Commission to conduct a rulemaking to establish boundaries between the Company and the Fund, with the goal of minimizing impacts to customers and ensuring adequate cash flow for the PIPP.

**Item #10** of the Commission's Appendix asks whether certain reporting should be required of the Company and more specific related questions.

**Answer:** Sierra Club believes that the Commission, at an absolute minimum, should require APCo to track the energy usage of PIPP participants as a class and provide corresponding information on the energy reduction programs being utilized. Sierra Club is generally supportive of the enumerated categories offered by APCo for this type of tracking. Sierra Club supports reporting as part of the annual USF adjustment proceeding.

**Additional Issues** raised by APCo include (1) whether the USF may collect more than \$25 million in any given year, given the \$25 million program cap and (2) how to administer the program once the \$25 million cap is reached.<sup>21</sup>

**Answer:** Sierra Club believes the "cost of the programs" is that amount spent or committed on PIPP, not the amount raised in the USF rider for potential expenditure or commitment. In the event that the USF raises more than \$25 million, the excess amounts raised can be rolled forward to the next program year, and the USF can be decreased in the annual

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<sup>21</sup> See Acts ch. 308 (2021) ("The annual total cost of any programs implemented pursuant to clauses (i), (ii), and (iii) shall not exceed costs, including administrative costs, in the aggregate of (a) \$25 million for any Phase I Utility or (b) \$100 million for any Phase II Utility in any rate year in which such program costs are incurred.").

adjustment proceeding. On the second point, Sierra Club expects that this issue will be addressed by the Department as part of program design.

### **CONCLUSION**

Sierra Club supports the Commission's Order reopening this docket for additional proceedings and appreciates the opportunity to comment on the questions posed. Sierra Club urges the Commission to adopt rules to oversee APCo's handling of USF funds within APCo's books and withdrawals from the Fund. Finally, Sierra Club believes Rider PIPP should be scaled down appropriately prior to the full start date of the Program to minimize any customer bill impacts.

Respectfully submitted,

SIERRA CLUB

*By counsel*

/s/ Matthew L. Gooch

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May 28, 2021

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## CERTIFICATE OF SERVICE

I hereby certify that a true copy of the foregoing was served this 28th day of May, 2021,  
by e-mail to:

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